

House Study Bill 564 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED OFFICE OF
OMBUDSMAN BILL)

A BILL FOR

1 An Act relating to investigations conducted by the office of
2 ombudsman.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 2C.9, subsection 4, Code 2022, is amended
2 to read as follows:

3 4. Request and receive from each agency assistance and
4 information as necessary in the performance of the duties of
5 the office.

6 a. Notwithstanding section 22.7, ~~pursuant to an~~
7 ~~investigation~~ the ombudsman may, pursuant to an investigation,
8 examine any and all records and documents of any agency unless
9 its custodian demonstrates that the examination would violate
10 federal law or result in the denial of federal funds to the
11 agency.

12 b. (1) Confidential records and documents provided to the
13 ombudsman by other agencies shall continue to maintain their
14 confidential status. The ombudsman is subject to the same
15 policies and penalties regarding the confidentiality of the
16 record or document as an employee of the agency.

17 (2) Information otherwise maintained as confidential as
18 provided by this section may be disclosed by the ombudsman for
19 any of the following reasons:

20 (a) As necessary to complete an investigation.

21 (b) As necessary to state and publish conclusions,
22 recommendations, and suggestions in accordance with sections
23 2C.16 and 2C.17.

24 (c) To the extent the ombudsman is required by law to report
25 the information or to testify in court.

26 c. The ombudsman may enter and inspect premises within
27 any agency's control and may observe proceedings and attend
28 hearings, with the consent of the interested party, including
29 those held under a provision of confidentiality, conducted by
30 any agency unless the agency demonstrates that the attendance
31 or observation would violate federal law or result in the
32 denial of federal funds to that agency.

33 d. This subsection does not permit the examination of
34 records or access to hearings and proceedings which are the
35 work product of an attorney under section 22.7, subsection 4,

1 or which are privileged communications under [section 622.10](#).
2 In addition, this subsection shall not be interpreted to permit
3 an agency to deny production of such records and documents when
4 requested by the ombudsman.

5 Sec. 2. Section 2C.11A, Code 2022, is amended to read as
6 follows:

7 **2C.11A Subjects for investigations — disclosures of**
8 **information.**

9 The office of ombudsman shall either investigate or decline
10 to investigate a complaint filed by an employee who is not a
11 merit system employee or an employee covered by a collective
12 bargaining agreement and who alleges that adverse employment
13 action has been taken against the employee in violation of
14 section 70A.28, subsection 2. A complaint filed pursuant
15 to [this section](#) shall be made within thirty calendar days
16 following the effective date of the adverse employment action.
17 The ombudsman shall investigate review the matter and shall,
18 in writing to the employee, either decline to investigate the
19 matter or issue findings following an investigation relative
20 to the complaint in an expeditious manner. The ombudsman's
21 findings following an investigation shall also be provided to
22 the agency or officer who is the subject of the allegations.

23 Sec. 3. Section 2C.21, Code 2022, is amended to read as
24 follows:

25 **2C.21 Witnesses.**

26 A person required by the ombudsman to provide information
27 shall be paid the same fees and travel allowances as are
28 extended to witnesses whose attendance has been required in
29 the district courts of this state. Officers and employees of
30 an agency shall not be entitled to such fees and allowances.
31 A person who, with or without service of compulsory process,
32 provides oral or documentary information requested by the
33 ombudsman shall be ~~accorded the same privileges and immunities~~
34 ~~as are extended to witnesses in the courts of this state, and~~
35 ~~shall also be~~ entitled to be accompanied and advised by counsel

1 while being questioned.

2 Sec. 4. Section 70A.28, subsection 6, Code 2022, is amended
3 to read as follows:

4 6. Subsection 2 may also be enforced by an employee through
5 an administrative action pursuant to the requirements of this
6 subsection if the employee is not a merit system employee or
7 an employee covered by a collective bargaining agreement. An
8 employee eligible to pursue an administrative action pursuant
9 to this subsection who is discharged, suspended, demoted,
10 or otherwise receives a reduction in pay and who believes
11 the adverse employment action was taken as a result of the
12 employee's disclosure of information that was authorized
13 pursuant to subsection 2, may file an appeal of the adverse
14 employment action with the public employment relations
15 board within thirty calendar days following the later of the
16 effective date of the action or the date a finding or written
17 decision declining to investigate is issued to the employee
18 by the office of ombudsman pursuant to section 2C.11A. The
19 findings issued by the ombudsman may be introduced as evidence
20 before the public employment relations board. The employee has
21 the right to a hearing closed to the public, but may request a
22 public hearing. The hearing shall otherwise be conducted in
23 accordance with the rules of the public employment relations
24 board and the Iowa administrative procedure Act, chapter 17A.
25 If the public employment relations board finds that the action
26 taken in regard to the employee was in violation of subsection
27 2, the employee may be reinstated without loss of pay or
28 benefits for the elapsed period, or the public employment
29 relations board may provide other appropriate remedies.
30 Decisions by the public employment relations board constitute
31 final agency action.

32 EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

35 This bill concerns investigations conducted by the office

1 of ombudsman.

2 Code section 2C.9, relating to the ombudsman's powers,
3 is amended related to the confidentiality of documents
4 and information received by the office of ombudsman from
5 an agency. The Code section is amended to provide that
6 confidential information may be disclosed by the ombudsman as
7 necessary to complete an investigation, as necessary to publish
8 recommendations to an agency or conclusions as authorized by
9 Code sections 2C.16 and 2C.17, or to the extent the ombudsman
10 is required by law to report the information or testify in
11 court. The Code section is further amended to provide that it
12 shall not be interpreted to permit an agency to deny production
13 of records and documents when requested by the ombudsman.

14 Code section 2C.11A, concerning certain whistleblower
15 complaints filed by an employee that are subject to
16 investigation by the office of ombudsman, is amended to provide
17 that the office of ombudsman may, in writing to the employee,
18 decline to investigate the complaint. The bill also provides
19 that if findings are issued following an investigation, the
20 findings shall also be provided to the agency or officer who
21 is the subject of the allegations. Code section 70A.28,
22 concerning whistleblower complaints, is amended to conform to
23 the changes made to Code section 2C.11A.

24 Code section 2C.21, concerning witnesses, is amended to
25 provide that the ombudsman is not required to afford a person
26 who provides oral or documentary evidence requested by the
27 ombudsman the same rights as are extended to witnesses in
28 court.